



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,637	05/12/2005	Peter Oakley	0690-0123PUS1	1067

2292 7590 09/10/2008
BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER

HOLT, ANDRIAE M

ART UNIT	PAPER NUMBER
----------	--------------

1616

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

09/10/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No. 10/534,637	Applicant(s) OAKLEY ET AL.	
	Examiner Andriae M. Holt	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-17 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to the amendment filed May 2, 2008. Claims 7-17 are pending in the application. Original claims 1-6 have been cancelled.

Status of the Claims

Rejections not reiterated from the previous Office Action are hereby withdrawn. The following rejections and/or objections are newly applied. They constitute the complete set of rejections and/or objections presently being applied to the instant application.

Claim Objections

Claim 16 is objected to because of the following informalities: the misspelling of pyraclostrobin in line 2 of the claim. Add the letter "p" to the spelling of the word. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

Art Unit: 1616

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 7-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asrar et al. (US 2003/0060371).

Applicant's Invention

Applicant claims a synergistic mixture of a) a strobilurin compound of formula I



and b) a glyphosate derivative II in a synergistically active amount. Applicant also claims a method of increasing the yield in glyphosate-resistant legume using the above referenced mixture.

Determination of the scope of the content of the prior art

(MPEP 2141.01)

Asrar et al. teach a method of increasing the vigor and/or the yield of an agronomic plant comprising treating the plant or its propagation material with an effective amount of an active agent which has the capability of increasing the yield and/or vigor of the plant in the absence of pest pressure by fungal plant pathogens,

Art Unit: 1616

where the active ingredient is selected from the group consisting of a diazole fungicide, a triazole fungicide, and a strobilurin-type fungicide (page 1, paragraph 13) (method of increasing the yield). Asrar et al. teach examples of triazole fungicides that are preferred for use in the invention include epoxiconazole, fluquinconazole, metconazole, and propiconazole (page 5, paragraph 50)(fluquinconazole, metconazole, instant invention). Asrar et al. further teach examples of diazole fungicides that are useful include prochloraz (page 5, paragraph 51). Asrar et al. teach strobilurin-type fungicides that are useful include pyraclostrobin (pyraclostrobin, formula I, claims 1-2 and 4-5, instant invention), azoxystrobin, and picoxystrobin (page 50, paragraph 52)(compounds of formula I).

Asrar et al. teach it is preferred to use the one or more active agents in combination with other materials in a composition (page 16, paragraph 359) (combination of active ingredients, strobilurin and azole fungicide). Asrar et al. teach that compositions of the present invention are comprised of an effective amount of one or more of the active ingredients described above and one or more adjuvants (page 16, paragraph 360). It is known in the art and common practice to combine active ingredients to increase the desired effect such as weed control and yield improvement. Asrar et al. further teach such compositions can also include such other materials as herbicides and pesticides (page 16, paragraph 360). Asrar et al. teach the active agent can be combined with an herbicide for foliar application to the plant. Asrar et al. further disclose the active agents discussed above can be used in this combination (page 16, paragraph 360). Asrar et al. teach that when an herbicide is used with the active agent,

Art Unit: 1616

any herbicide used, provided that the plant is to be treated has resistance to such herbicide (page 16, paragraph 361). Asrar et al. teach as described on page 4, paragraph 41, it is preferred that the plant have a transgenic event providing the plant with resistance to the herbicide being used (page, 16, paragraph 361) (glyphosate-resistant, instant invention). Asrar et al. teach on page 17, paragraph 362 and in claim 50, glyphosate is a preferred herbicide (glyphosate derivative II, instant invention). Asrar et al. further teach when the active ingredient is a diazole, triazole or strobilurin-type fungicide, a preferred herbicide is glyphosate (page 17, paragraph 363). Asrar et al. teach that the compositions contain the active agent in an amount from about 1% to about 50 %, by weight, and more preferably, in an amount from about 5% to about 25% (page 17, paragraph 366) (weight ratio, instant invention).

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

Asrar et al. does not expressly teach the combination of pyraclostrobin and a glyphosate compound in a ratio of 5:1 to 0.01 to :1.

Finding a prima facie obviousness

Rationale and Motivation (MPEP 2142-2143)

It would have been obvious to one of ordinary skill in the art to use the teachings of Asrar et al. to produce a compound that increases the yield in glyphosate-resistant legumes. One of ordinary skill in the art at the time of invention would have been motivated to use the compounds as taught by Asrar et al. because Asrar et al. teach it is

Art Unit: 1616

within the skill of one skilled in the art to combine a strobilurin compound, diazole fungicide, and/or a triazole fungicide with a herbicide, most preferably glyphosate, to produce a compound to be used to improve the yield and vigor of an agronomic plant. It is known in the art to combine various herbicidal and fungicidal compounds to improve the efficacy of active ingredients. Given the state of the art as evidenced by the teachings of the cited reference, and absent any evidence to the contrary, there would have been a reasonable expectation of success in combining the teachings of the cited references to formulate an economical composition that would increase the yield of a desired crop, decrease the resistance of an active herbicide, by enhancing its effects, and decrease the amount of the active ingredients that have to be used in formulation.

In response to applicant's argument that the Asrar '371 document does not give the slightest hint regarding the combined action of a fungicide and a herbicide to increase crop yield, Asrar et al. specifically define increasing yield on page 3, paragraph 36. Asrar et al. define "increasing the yield" is that the yield of a product of the plant is increased by a measurable amount over the yield of the same product of the plant produced under same conditions, but without the application of the subject matter. Thus, it would have been obvious to one of ordinary skill in the art taking the Asrar'371 publication as a whole, that the combination of the herbicide, glyphosate with a triazole fungicide would increase the crop yield, as this is the claim of the invention "method of improving the yield and vigor of an agronomic plant".

None of the claims are allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andriae M. Holt whose telephone number is (571)272-9328. The examiner can normally be reached on 7:00 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richter Johann can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Andriae M. Holt
Patent Examiner
Art Unit 1616

/Johann R. Richter/
Supervisory Patent Examiner, Art Unit 1616